

APPEAL NO. 030224  
FILED MARCH 11, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 3, 2003. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 16th compensable quarter. The appellant (carrier) appeals this decision, arguing that the entitlement determination was based on an improperly admitted document. The claimant urges affirmance.

DECISION

Affirmed.

The carrier asserts that the hearing officer erred in admitting Claimant's Exhibit No. 8, which consists of several documents issued by the Texas Rehabilitation Commission (TRC), including an Individualized Plan for Employment (IPE). In order to obtain a reversal for the admission of evidence, the carrier must demonstrate that the evidence was actually erroneously admitted and that "the error was reasonably calculated to cause and probably did cause rendition of an improper judgment." Hernandez v. Hernandez, 611 S.W.2d 732, 737 (Tex. Civ. App.-San Antonio 1981, no writ). It has also been held that reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mut. Ins. Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.).

The carrier argues that without the IPE, the hearing officer would have been precluded from finding that the claimant is entitled to SIBs. We disagree. The claimant provided evidence that, in accordance with a plan provided for him by TRC, he was earning college credits during the qualifying period. The evidence further reflects that the TRC funded a portion of the expenses associated with taking the college courses. As a result, we cannot agree that the admission of the IPE was reasonably calculated to cause and probably did cause the rendition of an improper judgment, as it was not a prerequisite to a finding of SIBs entitlement in this case.

Section 408.142(a) outlines the requirements for SIBs eligibility as follows:

An employee is entitled to [SIBs] if on the expiration of the impairment income benefits [IIBs] period computed under Section 408.121(a)(1) the employee:

- (1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury;

- (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;
- (3) has not elected to commute a portion of the [IIBs] under Section 408.128; and
- (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

Rule 130.102(d)(2) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period. Rule 130.101(8) defines the phrase "full time vocational rehabilitation program." Whether the claimant satisfied the good faith requirement for SIBs entitlement was a factual question for the hearing officer to resolve. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **AMERICAN MOTORISTS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Roy L. Warren  
Appeals Judge